

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3068 OF 2004

Sanjay Gangadhar Patil ..Applicant
(Accused No.19)

versus

The State of Maharashtra ..Respondent

Mr. O. A. Siddiqui with Mr. J. R. Khan for
the Applicant - Accused No.19.

Mr. A. S. Gadkari, APP for the State - Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 22ND DECEMBER, 2004.

ORAL ORDER :

1. Heard Advocate for the Applicant and learned APP for the State.
2. This Bail application was earlier placed before justice Bhosale. However, pursuant to his request it was assigned to me. I heard the matter about three months back and matter was kept part heard. After that my assignment changed and the present assignment of civil work was given. The matter came before me, but since the Hon'ble Chief Justice has to pass orders in respect of part heard matters

also, the matter was again placed before the Hon'ble Chief Justice at my instance for appropriate orders and now the matter has been assigned to me, again.

3. The accused - applicant is an accused in MPSC Scam. He is in custody since last 23 months (he will be completing 23 months on 28.12.2004, as stated by his Advocate). He is seeking bail on the basis of the order of the Supreme Court passed in **Criminal Appeal No. 1201 of 2004 Pandharinath D. Wani vs. The State of Maharashtra** who was one of the accused in MPSC scam and who was the Chairman of MPSC at the relevant time.

4. Advocate for the accused made two submissions, firstly, on the ground of parity, bail is required to be granted to the accused because he is also in custody for last 23 months and secondly, on the ground of illness of his father. It was stated in this regard that the applicant has lost his mother while he is in custody and his father who is also a retired Police Officer is suffering from paralysis. The fact that the applicant has lost his mother during the custody period and that his father is suffering from paralysis, were not disputed by the learned APP. However, Advocate for the accused contended that in this background, firstly, bail be granted to the applicant on the basis of the

judgment of the Supreme Court or in the alternative temporary bail should also be granted.

5. Since I had kept the matter part heard after period of three months, I do not think it proper to again keep it part heard by considering the request for temporary bail.

6. In the aforesaid Appeal No.1201 of 2004, copy of which was given to me by Mr. Siddiqui, Supreme Court has noted Pandharinath Wani - the Chairman of MPSC was an accused in MPSC Scam. He was accused of commission of offence under Sections 409, 418, 420, 465, 466, 467, 468, 471, 474, 477, 380, 381, 457 read with Sections 120-B, 201 and Section 34 of Indian Penal Code and under different sections of different enactments in Special Case No. 68 of 2002. The Supreme Court has noted that he is arrested on 6.10.2002 and he has completed two years in jail. There was no likelihood of the trial being concluded for a considerable length of time because the Supreme Court was told that there were more than 1200 witnesses cited by the prosecution in that case. Therefore thereafter the Supreme Court observed " In view of the peculiar facts and circumstances of the present cause, we are inclined to grant bail to the Appellant - Pandharinath D. Wani on certain conditions".

7. Mr. Siddiqui pointed out that the Hon'ble Court has taken note of the case in its entirety and not specifically a case against Pandharinath Wani. In this regard Mr. Siddiqui in **Bharat Shantilal Shah versus State of Maharashtra in S.L.P. (Cri.) 150 of 2002**, where while granting bail, Supreme Court specifically observed that this order not to be treated as precedent. Mr. Siddiqui therefore urged that if the Supreme Court wanted that the order of granting bail to accused Pandharinath Wani should be confined to him alone, then the Supreme Court would have specifically passed an order in that regard on the same line, that was done in Bharat Shah's case.

8. Mr. Siddiqui also contended that the objection of the prosecution on the ground that there are two more C.Rs. pending against him, is also of no use in view of the Judgment of Justice Vishnu Sahai reported in **1997 VI LJ 98 (NOC)** wherein in paragraphs 4 and 5 about pendency of two cases against the applicant, it was observed that two cases are pending against the applicant would not be lethal enough to refuse bail to the applicant.

9. Then Mr. Siddiqui pointed out before me the Judgment of the Supreme Court reported in **(1996) Supreme Court Cases 751 Chandraswami And another vs.**

Central Bureau of Investigation, wherein in paragraph 20 the Supreme Court has noted that there are several other cases pending in courts against the appellants. In short the contention of Mr. Siddiqui was therefore that even if 2 C.Rs. of 1996 one of Sangli Police Station vide C.R. No. 46/96 and other of Bhadrakali Police Station vide C.R. No. 23/96 are pending, that cannot be ground to refuse bail to the applicant - accused.

10. As against this, the learned APP pointed out and read to me affidavit in reply filed by them to this application, wherein attempt is made to interpret the order of the Supreme Court in Pandhari Wani's case. It was the contention of the learned APP that when the Supreme Court observed "**In view of the peculiar facts and circumstances of the present case**" it meant that only facts pertaining to the case of Pandhari Wani were considered and these observations are not of general nature. While considering the submissions, it has to be noted that in Bharat Shah's case the Supreme Court has further stated : "**This order not to be treated as a precedent.**" There is no such exception made in the bail order of Pandharinath Wani. Facts that he is in custody for last 23 months, that there is no likelihood of trial being concluded for a considerable length of time and that there are 1200

witnesses, are glaring facts which cannot be discarded. It is clear that there is no possibility of trial being concluded even within 3 - 4 years, considering the pendency of the cases before the Special Court and in the manner such cases progress. It is true that there are two C.Rs. pending against the applicant - accused, as stated by me, they are of 1996, charge sheet is filed but the trial has not yet commenced.

11. In the circumstances therefore when particularly the applicant - accused is placed in similar situation as Pandharinath Wani, this is a case where bail on parity has to be granted. There is therefore no necessity to consider alternative prayer of Mr. Siddiqui though it has a considerable force even for grant of temporary bail.

12. In the circumstances this application is allowed. Applicant - accused be released on bail subject to the following conditions:

1. That the, Applicant - Accused shall surrender his passport to Anti Corruption Bureau (ACB), Mumbai. If the passport has already been surrendred, then the same shall remain with the A.C.B. He should also file a statement before the Special Judge,

Mumbai, indicating that he has surrendered the passport.

2. The applicant shall execute the bail bonds of Rs.5 (Rupees Five Lakhs) with two sureties for the like amount to the satisfaction of the Special Judge, Mumbai.

3. The Applicant proposes to stay at Mumbai. He is directed to report to the A.C.B., Mumbai, once in two weeks for a period of six months preferably on alternate Saturdays. Thereafter, once in a month, i.e. on every first Saturday of the month till the trial is over.

4. The applicant shall submit the details of his residential address, telephone numbers (land line as well as mobile) e-mail address, if any, to the A.C.B. Mumbai within a period of two weeks from the date of his release from custody.

5. The applicant shall not leave the territory of Mumbai without taking prior permission from the Special Judge, Mumbai. He shall also furnish the tour programme as

well as his contact number and address to the A.C.B. Mumbai.

6. The applicant shall not tamper with the evidence or get in touch with any of the prosecution witnesses.

7. The applicant shall cooperate with the prosecution.

. It is made clear that if any of the aforementioned conditions is violated or the applicant in any way misuses the liberty granted to him, then the respondents shall be at liberty to move the Special Judge for cancellation of the bail.

Application stands disposed of accordingly.

22.12.2004

(D.G. DESHPANDE, J.)